BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of
Rocky Olan Dyer vs Mitch Canton d/b/a All Green

Order

On Monday, March 31, 2003, an administrative hearing was held for the purpose deciding a wage dispute between Rocky Dyer and Mitch Canton d/b/a All Green. The hearing was held in Room 305 of the Arkansas Department of Labor, 10421 West Markham, Little Rock, Arkansas. Present was the Hearing Officer, Cindy Uhrynowycz and claimant, Rocky Dyer. The respondent and former employer, Mitch Canton was not present. Don Cash, Prevailing Wage Supervisor, Arkansas Department of Labor, observed, but did not participate.

Facts

Mr. Dyer filed a wage claim with the Arkansas Department of Labor claiming wages owed to him by Mr. Canton of $450.00. Mr. Canton failed to respond to Department written inquiries and the case was assigned to an investigator. The field investigator entered a preliminary determination that no wages were due to Mr. Dyer and Mr. Dyer asked for this hearing.

In wage claim matters, the claimant has the burden of proof. This burden cannot be met by mere testimony alone. A claimant must show by a preponderance of the evidence that the claimant worked for the employer, the rate of pay, dates worked for the employer, amount of money received and amount still due. Unfortunately, Mr.

Dyer was unable to present any clear testimony or other evidence as to the dates he worked for which he claims he was not paid. He was unable to testify as to the number of hours he worked for which he claimed he was not paid. In addition, Mr. Dyer was unable to testify as to the exact amount owed to him. He further admitted to taking $100.00 dollars from Mr. Canton's business account after the end of the employment relationship and that Mr. Canton had filed criminal theft charges against him. Mr. Dyer stated he had not yet been to trial on the charges but was scheduled for court later in April.

Findings

The Hearing Officer finds that Mr. Dyer was unable to meet his burden of proof that he is owed $450.00, and therefore, finds he is not entitled to back wages from Mr. Canton.

Order

The Hearing Officer hereby orders that this wage claim be dismissed. Mr. Dyer is reminded herein that if he disagrees with this action, he may pursue legal action against his former employer in small claims court within three years from the date the wages became due and owing.

Cindy Thompson

Hearing Officer

4/08/03

Date

BEFORE THE ARKANSAS DEPARTMETN OF LABOR

In The Matter of
Susan Dougherty vs.
J. Michael's Family Hairstyles

ORDER

On July 14 , 2003, a hearing was held in the offices of the Arkansas Department of Labor, 10421 West Markham, Little Rock, Arkansas at 10:30 a.m. The purpose of the hearing was to take testimony and receive evidence concerning the appeal filed by Susan Dougherty from a Preliminary Wage Order issued by this Department finding she was not entitled to vacation pay. Ms. Daugherty was present as was Mike Fugate representing J. Michael's Family Hairstyles. From the evidence and testimony presented, the following Order is entered.

Ms. Dougherty began work for J. Michael's Family Hairstyles in February 2001. She was employed until February 28, 2003. She worked as a hairstylist. Ms. Dougherty alleges that upon her separation from employment, she was entitled to $480.00 in accrued vacation. She alleges that Mr. Fugate denied the vacation by unfairly considering her pregnancy related absences in determining whether or not she had excessive absences for purposes of receiving accrued vacation.

It is undisputed by either party that the contract J. Michael's Family Hairstyles had with its employees was that accrued vacation would be paid. However, the written policy contained exceptions to this promise. Those exceptions include quitting without a two weeks notice, being discharged, habitual tardiness and absences. Mr. Fugate testified that he denied the vacation because of Ms. Dougherty's excessive absences. He testified he did not take into account her pregnancy related absences. To support his testimony, he presented absentee reports for the year of 2002. He admitted he never counseled Ms. Dougherty about her

absences. According to the absentee reports, Ms. Dougherty was absent, late or left work early for non pregnancy related reasons on 41 occasions.

It is well established that there are no state or federal laws that require payment of vacation time. The question that must be answered is whether or not the employer violated any contract, written or oral, with employees for payment of vacation time. The claimant has the burden of proof to establish both the contract and any breaches of the contract.

Here, Mr. Fugate admitted a contract with the employees, however, the evidence shows that the employer reserved the right to apply certain exceptions. In this case the employer applied the exceptions and did not pay vacation. The claimant, Ms. Dougherty, did not meet her burden of showing that J. Michael's Family Hairstyles breached that contract. Her vacation was denied pursuant to articulated reasons for which the employer would deny payment of vacation and those reasons were supported by the documents submitted by Mr. Fugate. There is no evidence that Mr. Fugate denied the vacation because of Ms. Dougherty's pregnancy.

THEREFORE, it is hereby ORDERED that this claim be dismissed. The claimant is reminded that if she so desires, she may file suit herself in small claim court within three years from the date she alleges the vacation became due.

Cindy Uhrynowycz, Hearing Officer

7/24/03

Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of
Wanita Dempsey vs.
FL Davis Ace Hardware

Order

On Monday, July 21, 2003, an administrative hearing was held in the above matter. This hearing was held for the purpose of taking testimony and receiving evidence relative to the wage claim filed by Wanita Dempsey against FL Davis Ace Hardware. FL Davis Ace Hardware objected to the preliminary wage determination order issued in this case finding that Ms. Dempsey was owed $406.82.

After considering the evidence and testimony, the preliminary wage determination order is reversed.

In wage claim cases, the claimant has the burden of proof. Ms. Dempsey claims for unpaid sick leave, vacation leave, and for insurance premiums deducted from her pay. The evidence is clear that the employer never promised to pay out accrued unused vacation pay upon termination of employment. Ms. Dempsey has the burden of proof to show that the premiums deducted did not reflect the cost of the insurance. It is not clear from the evidence or testimony that she was overcharged for insurance. Since she has the burden of proof on this issue, we cannot find clear evidence that she was overcharged for insurance.

THEREFORE, it is hereby ordered that the preliminary wage determination in this case be reversed, and that this wage claim be dismissed. The claimant is reminded that should she disagree with this action, she may file a private lawsuit against her former employer in small claims court within three years from the date the wages became due.

Cynthia L. Hayes
Hearing Officer

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of
Donna Fair vs.
Diamond Hospitality

Order

On Tuesday, September 9, 2003, a hearing was held in the offices of the Arkansas Department of Labor. The hearing was held pursuant to an appeal by Diamond Hospitalities, LLC, from a preliminary wage determination that found Diamond Hospitalities, d/b/a Hardee's owed Donna Fair the sum of $224.14 in unpaid wages.

The facts of this case are simple and not in dispute. Ms. Fair performed work for Diamond Hospitalities and did not receive her final paycheck in the amount of $224.14. Ms. Fair alleges that when she went to pick up the check, she was told someone else must have picked up the check. Diamond Hospitalities could not verify whom they had given the check to, but had to admit the check was not given to Ms. Fair. A copy of the final check was presented at hearing and the signature on the endorsement is obviously not that of Ms. Fair. Ms. Fair also filed a police report regarding the stolen check.

Her testimony, undisputed, was that she never received the check from her employer. Diamond Hospitality cannot verify what they did with the check or who they released the check to, but admit it was not released to Ms. Fair. Additionally, Ms. Fair had previously tried to give a friend written permission to pick up a previous paycheck, and was denied permission by Diamond Hospitality to allow someone else to pick up the check. It is clear the check was not in Ms. Fair's control and delivery of wages had not been completed by the employer.

THEREFORE it is hereby ORDERED that Diamond Hospitality, LLC, d/b/a Hardee's pay the amount of $224.14. The check made payable to Donna Fair should be forwarded to the

Arkansas Department of Labor, Labor Standards Division within twenty days of the date of this order.

Cindy Uhrynowycz, Hearing Officer

10/10/03
Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of
Ronald Coleman vs.
Cycle and Marine

Order

On Tuesday, September 23, 2003, a hearing was held in the offices of the Arkansas Department of Labor in the above matter. This hearing was held pursuant to an appeal filed by Ronald Coleman from a Preliminary Wage Determination Order issued by the Arkansas Department of Labor, finding he was not due wages from his former employer, Cycle and Marine Center. Present at the hearing, was the claimant, Ronald Coleman and Michael Adams, owner of Cycle and Marine Center. The undersigned acted as hearing officer.

Mr. Coleman filed a wage claim with the Arkansas Department of Labor alleging that his former employer had failed to pay him wages in the amount of $409.00. Mr. Coleman alleged that he was due $252.00 in unpaid vacation pay, $75.00 in bonus payment for an incentive bonus and a partial commission on a sale to Mr. Micah Beatty and a bonus payment attendant to that sale.

In wage claim matters, the claimant has the burden of proving his or her entitlement to wages claimed by the preponderance of the evidence. Unfortunately in this case, Mr. Coleman has failed to meet that burden.

Mr. Coleman claims $252.00 due for vacation pay. Vacation pay is a benefit offered by an employer and is not a benefit required to be given to employees by state or federal law. Even if Mr. Coleman had accrued vacation at the time of his departure from employment, there is not evidence that Mr. Adams or Cycle and Marine Center have promised or entered into any contract to pay accrued but unused vacation pay upon termination of employment.

Secondly, Mr. Coleman claims an incentive payment of $75.00 for a prior sale. The evidence and testimony indicated that Marine and Cycle Center did not receive an incentive payment for that sale.

Mr. Coleman also claims a partial commission is due him from a sale to a Micah Beatty on March 11, 2003. Mr. Coleman's wage claim form indicates that he left on March 11, 2003. The testimony at the hearing indicated that during Mr. Coleman's attempt to sell the vehicle, some sort of problem arose, and Mr. Adams completed the sale that day. The reasons for the problem were in dispute, with Mr. Adams alleging that Mr. Beatty became angry with Mr. Coleman and demanded a new salesperson, and Mr. Coleman alleging that Mr. Beatty was only concerned about the sale price. It seems that the problem with the sale was more serious than Mr. Coleman alleges, in that Mr. Adams himself had to complete the sale and the sale appears to have taken place the day Mr. Coleman left employment with Cycle and Marine. Mr. Coleman has failed to meet his burden of proof that he is entitled to a partial commission or any incentive payment in this case.

THEREFORE it is hereby ordered that Cycle and Marine Center, owned and operated by Michael Adams is not indebted to Ronald Coleman.

Cynthia L. Uhrynowycz

Cynthia L. Uhrynowycz

1-30-04

Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In the Matter of
Cesar Martinez vs.
Enviro-Kleen Enterprises

Order

On Wednesday, November 5, 2003, a hearing was held for the purpose of taking testimony and other evidence pertinent to the wage dispute between Cesar Martinez and Envior-Kleen Enterprises. Neither party was present at the appointed hour. Proper notice was served on both parties.

THEREFORE, this matter is dismissed and the Arkansas Department of Labor will close its file in this matter.

Cynthia Uhrynowycz, Hearing Officer

January 7, 2004
Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In the Matter of
David Hicks vs. Allen Engineering

Order

On November 17, 2003, at 10:00 a.m., a hearing was held in the offices of the Arkansas Department of Labor, regarding the wage claim filed by David Hicks against Allen Engineering. Mr. Hicks had filed a timely appeal after the entry of a Preliminary Wage Determination Order by the Arkansas Department of Labor, finding he was not owed vacation pay from Allen Engineering. Present and representing himself was Mr. Hicks. Also present was the hearing officer, Cindy Uhrynowycz. Allen Engineering was not present, but submitted a letter in lieu of their appearance. The letter was received into evidence.

Mr. Hicks worked for Allen Engineering as a Quality Assurance Inspector until a fire closed the business around May 5, 2003. Mr. Hicks, as well as the other employees of Allen Engineering were laid off. In August of 2003, Mr. Hicks applied for another position. On August 15th, 2003, he was contacted to come back to work for Allen Engineering. On August 18th, 2003, he notified Allen Engineering he would not return to work because he accepted a job offer elsewhere. Mr. Hicks testified that he had accrued approximately 72 hours of vacation for which he was not paid when he was laid off in May of 2003.

It is undisputed by either party that the vacation policy in effect and in question reads as follows:

" Any employee who voluntarily resigns with out (sic) giving a minimums of two weeks' notice forfeits all vacation pay eligibility rights. Only employees, who voluntarily leave with at least two weeks' notice after being employed at least twelve continuous months, will be paid for any unused vacation. Employees who are terminated, 'not in good standing,' will not receive vacation pay."

The position of Allen Engineering is that Mr. Hicks should have come back to work and then given two weeks' notice to be eligible for vacation pay. Mr. Hicks' position is that his employment ended through no fault of his own and he had accrued the vacation, and therefore should have been entitled to receive payment for it.

Although vacation is a benefit not required to be offered by state or federal law, it is a benefit to which an employer may bind itself contractually. The first inquiry is whether or not Allen Engineering bound itself contractually to offer vacation pay to its employees and therefore, to David Hicks. The language in the handbook indicates that Allen Engineering did indeed intend to bind itself to give vacation pay and to pay out unused vacation pay upon termination of employment. However the policy is silent as to what was intended in case of termination from employment that was not the fault of the employee. That represents an ambiguity that must be construed against Allen Engineering.

Mr. Hicks was not at fault in his layoff from Allen Engineering. There is no dispute that he was laid off because the business had to close down due to a fire. Mr. Hicks testified after May of 2003, he received unemployment benefits that were not contested by Allen Engineering. Additionally, Mr. Hicks was not called back to work until more than sixty days after the fire. When he was called back, he testified that he was offered a lesser job than the one he previously held. It is clear that his employment relationship ended in May of 2003 and that he was not terminated for "cause".

THEREFORE, it is hereby ORDERED that the Preliminary Wage Determination Order be reversed, and that Allen Engineering is indebted to David Hicks in the amount of $771.12 for unpaid vacation.

Cindy Uhrynowycz, Hearing Officer

11/24/03

Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In the Matter of
Farrar Cheteer vs.
New Age Distributing

Order

On Tuesday, December 16, 2003, a hearing was held at the offices of the Arkansas Department of Labor. The purpose of the hearing was to consider the appeal filed by New Age Distributing from a Preliminary Wage Determination Order issued by the Arkansas Department of Labor in favor of Farrar Cheteer, which held that New Age Distributing was indebted to Mr. Cheteer for unpaid wages in the amount of $547.15. Present at the hearing was the wage claimant, Farrar Cheteer, and on behalf of New Age Distributing, Don Frantz. The undersigned presided as Hearing Officer.

Mr. Cheteer was employed by New Age Distributing as a route delivery person, delivering soft drinks to stores. It is undisputed that his rate of pay was $9.38 per hour. Mr. Cheteer resigned his position around August 19th, 2003. It is undisputed that Mr. Cheteer worked 64 hours and was not paid his final paycheck.

New Age Distributing claims a set off of Mr. Cheteer's entire last paycheck of $600.32. This claim of set off is based on the theft of a company moneybag containing checks and cash. During a delivery to a store, located in what Mr. Cheteer testified was in a "bad area", he left the employer's money bag on the front seat of the delivery truck and left the doors unlocked. Mr. Cheteer admits he did this and could not proffer a reasonable explanation for his failure to take the simplest of precautions. The moneybag was stolen while Mr. Cheteer was in the store. Mr. Cheteer did not dispute that the amount withheld from his wages was less than the amount stolen. Mr. Cheteer agreed to a $50 per paycheck deduction to reimburse his employer but then resigned before making any payments

Although it is clear that Mr. Cheteer was grossly negligent, the only deductions from minimum wage that are allowable are those for the benefit of the employee. This is not the case here. Therefore, as Mr. Cheteer is not exempt from applicable minimum wage or overtime laws, he must receive minimum wage for the hours he has worked. The amount he has earned in excess of minimum wage may be set off in repayment of the employer's loss.

THEREFORE, it is hereby ORDERED that New Age Distributing is indebted to Farrar Cheteer in the amount of $329.60, which represents $5.15 per hour X 64 hours worked.

Cynthia L. Uhrynowycz

Cynthia L. Uhrynowycz

2/6/04

Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of
Margaret Thomas vs.
Fox Veterinary Service, Inc

ORDER

On Monday, December 29, 2003, a hearing was scheduled to be held in the offices of the Arkansas Department of Labor, to consider the appeal filed by Fox Veterinary Service. This appeal was filed to seek review of a Preliminary Wage Determination Order entered on November 10, 2003, which found that Fox Veterinary Service owed Margaret Thomas $101.76 in back wages.

Although proper notice was given to both parties, neither appeared for the hearing.

THEREFORE, it is hereby ordered that this wage claim be dismissed. The claimant is reminded she has three years from the date the wages were earned to file suit in small claims court, if she wishes to pursue this matter privately.

Cindy Thyssen

2/18/04

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of
Bruce Piker vs. American
Building Specialties

Order

On Tuesday, December 30, 2003, an administrative hearing was held in the offices of the Arkansas Department of Labor. The purpose of the hearing was to take testimony and receive evidence regarding the appeal filed by Bruce Piker from a Preliminary Wage Determination issued which found he was not entitled to wages he had claimed from American Buildling Specialties. Present were Mr. Piker, claimant, and Joe McIlveene, President, American Building Specialties. The undersigned presided as hearing officer.

From the testimony of the parties and the evidence introduced at the hearing, it appears that Mr. Piker has been reimbursed for all hours worked.

THEREFORE, it is hereby ORDERED that the Preliminary Wage Determination issued in this case be upheld.

Cynthia Uhrynowycz

Cynthia Uhrynowycz

2/18/04

Date